

In the High Court of Punjab and Haryana at Chandigarh

Crl. Appeal No.543-DB-1998

Date of decision: 12.12.2008

Smt. Baljinder Kaur

.....Appellant

versus

State of Punjab and another

.....Respondents

Coram: Hon'ble Mr. Justice S. S. Saron
Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Akshay Goel, Advocate (Amicus Curiae)
 and Mr. J.B.S Gill, Advocate for the appellant.

 Mr. S.S. Gill, Additional Advocate General,
 Punjab for the State.

S. S. Saron J.

This appeal has been filed by the appellant Baljinder Kaur against the judgment and order dated 27.10.1998 passed by the learned Sessions Judge, Hoshiarpur whereby the appellant has been held guilty and convicted for the offence punishable under Section 302 Indian Penal Code (“IPC” – for short) and sentenced to undergo life imprisonment; besides, to pay a fine of Rs.5000/- and in default of payment of fine to undergo further rigorous imprisonment for six months.

The case relates to the death of Smt. Baldev Kaur in her matrimonial home on 10.12.1995. The appellant is the mother in law of the deceased Baldev Kaur.

Shri Amarjit Salwan, Tehsildar-cum-Executive Magistrate, Hoshiarpur (PW-5) recorded the dying declaration (Ex. PJ) of Smt. Baldev Kaur (deceased) on 10.12.1995 at 6:15 PM. Before recording the said statement, Balkar Singh ASI (PW-12) submitted an application (Ex.PH) to Dr. Bhupinder Singh, Medical Officer, Civil Hospital, Hoshiarpur (PW-6) so as to ascertain whether Baldev Kaur (deceased) was fit to make a statement. The doctor (PW6) made an endorsement (Ex.PH/4) that the patient (Smt. Baldev Kaur) was fit to make a statement. Balkar Singh, ASI (PW-12) then made a request to Sh. Harminder Singh Sub Divisional Magistrate ('SDM' - for short) Hoshiarpur and vide endorsement (Ex.PH/1) the SDM deputed the Tehsildar-cum-Executive Magistrate Shri Amarjit Salwan (PW-5) to record the statement of Baldev Kaur. The Tehsildar-cum-Executive Magistrate, Amarjit Salwan (PW-5) sought opinion of the doctor vide endorsement (Ex.PH/2) as to whether the patient (Baldev Kaur) was fit to make a statement. Dr. Bhupinder Singh, Medical Officer (PW-6) vide endorsement (Ex.PH/3) on 10.12.1995 at 5.40 p.m. recorded that the patient (Baldev Kaur) was fit to make a statement. Thereafter the dying declaration (Ex.PJ) of Baldev Kaur was recorded by Sh. Amarjit Salwan (PW5). It is stated by Smt. Baldev Kaur (deceased) that four years had passed since she was married. She had two children. Her husband is also called by the name of Paramjit Singh. On 10.12.1995 she was admitted in the hospital. She had a sudden spat with her mother-in-law Baljinder Kaur (appellant) on that day at 6.00/7.00 a.m. At that time her husband Paramjit Singh had gone to pay obeisance at the place of Shahidan. In his absence, her mother-in-law (appellant) sprinkled kerosene oil on her and set her on fire. She was screaming and at that time, her husband returned back and threw a bucket of water on her and doused the fire. Her father-in-law and her husband got her

admitted in the hospital. Her father-in-law was very nice. The said statement was read over to Baldev Kaur (deceased) who thumb marked it. Dr. Bhupinder Singh, Medical Officer (PW6) appended his note (Ex.PJ/3) to the effect that the statement had been recorded in his presence and she (Baldev Kaur) remained conscious throughout her statement. The original statement (Ex.PJ) was sent to the Chief Judicial Magistrate, Hoshiarpur vide endorsement (Ex.PJ/2). A copy (Ex.PJ/4) of the dying declaration was given to Balkar Singh, ASI (PW-12). The Police proceedings (Ex.PJ/5) were recorded to the effect that on 8.12.1995 a chit was received from the doctor in respect of Baldev Kaur (deceased) at Police Station, Mehtiana, Hoshiarpur. Head Constable Nirmal Singh No.803 was directed to record the statement of the patient (Baldev Kaur) at Civil Hospital. Thereafter, Head Constable Nirmal Singh submitted an application to the doctor for recording the statement of Baldev Kaur. The doctor gave his opinion on 8.12.1995 and again on 9.12.1995 that the injured was unfit to make a statement. Thereafter, Balkar Singh, ASI, Police Station Mehtiana, Hoshiarpur (PW-12) along with Avtar Singh, Head Constable and Nirmal Singh, Head Constable later came to the Civil Hospital, Hoshiarpur. An application (Ex.PH) was submitted to the doctor for the purpose of recording the statement of Baldev Kaur wife of Paramjit Singh resident of Attowal and whether she was fit to make a statement. Dr. Bhupinder Singh (PW6) recorded that the injured was fit to make a statement. Balkar Singh, ASI (PW-12) requested SDM, Hoshiarpur for recording the statement of Baldev Kaur. The SDM, Hoshiarpur deputed Tehsildar-cum-Executive Magistrate Sh. Amarjit Salwan (PW-5) for recording the statement of the injured. Sh. Amarjit Salwan, Tehsildar-cum-Executive Magistrate (PW-5) recorded the statement of the injured Baldev Kaur (deceased) who put her

thumb impression on it. Dr. Bhupinder Singh, Medical Officer Civil Hospital, Hoshiarpur (PW-6) had certified to Sh. Amarjit Salwan, Tehsildar-cum-Executive Magistrate (PW5) that Baldev Kaur was fit to make a statement. From the statement, a case for the offence under Section 307 IPC was found to be made out. A writing was sent through Nirmal Singh, Head Constable to the Police Station for registration of a FIR. After registration of FIR, its number was asked to be intimated and the control room was also asked to be informed. Special reports were asked to be sent to the concerned officers. Balkar Singh, ASI (PW-12) along with Avtar Singh, Head Constable proceeded to the spot in the area of Civil Hospital, Hoshiarpur. Joginder Singh, ASI, Police Station, Sadar registered FIR No.291 dated 10.12.1995 (Ex.PJ/6) at Police Station, Sadar, Hoshiarpur for the offence under Section 307 IPC vide DDR No.24/25 dated 10.12.1995. The special report was received by the Chief Judicial Magistrate, Hoshiarpur at 11:30 p.m. on 11.12.1995. On the basis of FIR that had been registered; Balkar Singh ASI (PW-12) conducted the investigation of the case and went to the place of occurrence and prepared rough site plan (Ex.PN) with correct marginal notes. During spot inspection he vide memo (Ex.PO) lifted one bucket (Ex.P1), one plastic can (Ex.P2) which was empty and a match box (Ex.P3). A writing (Ex.PQ) was received at the Police Station on 12.12.1995 informing that Baldev Kaur had died. Balkar Singh, ASI (PW-12) then went to the hospital and prepared inquest report (Ex.PG) in respect of the dead body of Baldev Kaur. In terms of his request (Ex.PF), the dead body of Baldev Kaur was sent for post-mortem examination. Thereafter on 12.12.1995 itself the investigation was taken up by another Investigating Officer namely Kishan Dev ASI (PW-10). He partly investigated the case. On 15.12.1995 he obtained production

warrants of Baljinder Kaur (appellant) and arrested her in the case. The post-mortem on the dead body of Baldev Kaur was conducted by Dr. Renu Kumari, Medical Officer, Civil Hospital, Hoshiarpur (PW-4). Dr. M.L. Puri, Medical Officer, Civil Hospital, Hoshiarpur (PW1) examined Harmohan Singh, husband of Baldev Kaur (deceased) on 16.12.1995 at 12.30 p.m. After completion of the investigation, charge report (challan) was filed by the Police in the Court of the learned Additional Chief Judicial Magistrate, Hoshiarpur. From the material placed on record, the learned Additional Chief Judicial Magistrate in terms of his order dated 30.3.1996 found a prima facie case for the offence under Section 302 IPC to be made out against the accused Baljinder Kaur (appellant). The same was exclusively triable by the Court of Session. The case was, therefore, committed to the said Court for trial. The learned Sessions Judge, Hoshiarpur on 20.4.1996 charge-sheeted Baljinder Kaur (appellant) on the allegation that on 8.12.1995 in the area of village Attowal she did commit murder by intentionally causing the death of Baldev Kaur and thereby committed an offence punishable under Section 302 IPC. It was directed that the appellant be tried by the Court on the above said charge. The charge was read-over and explained to the appellant in simple Punjabi. She heard the charge and understood the same. She pleaded not guilty to the charge and claimed trial. The prosecution in order to prove its case examined as many as twelve witnesses; besides tendered documents in evidence. After completion of the prosecution evidence, the statement of the appellant Baljinder Kaur was recorded in terms of Section 313 of the Cr. P. C. The substance of the evidence on record that appeared against her in the prosecution evidence was put to her. Baljinder Kaur (appellant) stated that she was innocent and that Baldev Kaur (deceased) had accidentally caught

fire while working on a stove in the kitchen and her (Baldev Kaur's) husband Harmohan Singh (also known as Paramjit Singh) had extinguished the fire. Baldev Kaur along with her husband was living separately from them. Smt. Biro, it is stated, was the mediator of the marriage between Baldev Kaur (deceased) and her son. Baldev Kaur, it is alleged, had quarreled with her in order to please Smt. Biro. A false case was got registered against her (appellant Baljinder Kaur) on the second day of Baldev Kaur catching fire. Baldev Kaur, it is stated had continuously remained unconscious and was unfit to make any statement and the dying declaration was falsely concocted in order to falsely implicated her in the case. In defence Harmohan Singh alias Paramjit Singh (DW-1) son of the appellant and husband of Baldev Kaur (deceased) was examined.

The learned Sessions Judge, Hoshiarpur after considering the evidence and material on record convicted the appellant Baljinder Kaur for the offence punishable under Section 302 IPC and sentenced her to undergo imprisonment for life. The said conviction and sentence of the appellant is assailed in this appeal.

Learned counsel appearing for the appellant has contended that the dying declaration (Ex.PJ) is surrounded with suspicious circumstances and no reliance is liable to be placed on the same. It is submitted that mother and brother of the deceased Baldev Kaur were with her in the hospital for three days and they had tutored and prompted her to make the dying declaration. It is submitted that no kerosene oil was found at the place where the incident had occurred. Therefore, it is submitted that the burn injuries on the person of Baldev Kaur (deceased) were caused in an accidental fire. It also submitted that Baldev Kaur (deceased) and her husband Harmohan Singh alias Paramjit Singh (DW-1) were living

separately. Therefore, the story set up by the prosecution that the appellant had set Baldev Kaur (deceased) on fire is not believable or reliable. A reference has been made to the statement of Smt. Prito (PW-7) who is the mother of Baldev Kaur (deceased) and she has deposed that the fire was snuffed by the husband of Baldev Kaur (deceased).

In response learned counsel for the State has submitted that the dying declaration (Ex.PJ) made by Smt. Baldev Kaur (deceased) is cogent, reliable and convincing. It is submitted that the said plain and simple statement had clearly named Baljinder Kaur (appellant) as the culprit; besides, no role has been attributed to Harmohan Singh alias Paramjit Singh (DW-1) husband of the deceased or to her father-in-law. Rather Baldev Kaur stated that her father-in-law was a very nice person. Therefore, it is submitted that the dying declaration (Ex.PJ) coupled with the other circumstances fully establishes the case of the prosecution and the learned trial Court has rightly convicted and sentenced the appellant. The same does not warrant any interference by this Court.

We have given our thoughtful consideration to the contentions of the learned counsel appearing for the respective parties and with their assistance gone through the records of the case. The prosecution case, as has already been noticed, is based on the dying declaration (Ex. PJ) of Smt. Baldev Kaur (deceased) recorded by Sh. Amarjit Salwan, Tehsildar-cum-Executive Magistrate, Hoshiarpur (PW5) on 10.12.1995. It is stated by Baldev Kaur in her statement (Ex.PJ) that she was married and that her husband was also known by the name of Paramjit Singh. She was married to him four years ago and they had two children. On 8.12.1995 at about 6/7:00 a.m. Baldev Kaur had a sudden spat with her mother-in-law Baljinder Kaur (appellant). At that time her husband had gone to pay obeisance at the

place of Shahidan. In his absence her mother-in-law sprinkled kerosene oil on her and set her on fire. She screamed and in the mean time her husband had returned and he threw a bucket of water on her and put off the fire. Her father-in-law and husband got her admitted in the hospital. On the basis of the statement (Ex. PJ), initially a case for the offence under Section 307 IPC was registered. Dr. Jaspreet Singh Dhami, Medical Officer, Civil Hospital, Hoshiarpur (PW-3) proved the bed-head ticket (Ex. PC) of Baldev Kaur (deceased). On the application (Ex. PD) made by the police, he had declared the patient (Baldev Kaur) vide endorsement (Ex. PD/1) unfit to make a statement. It is stated by Dr. Jaspreet Singh Dhami (PW-3) that he admitted the patient (Baldev Kaur) who was brought to the hospital at 10:00 a.m. on 8.12.1995. She was not speaking and she expired in the hospital on 18.12.1995 (sic 12.12.1995) at 4:15 a.m. Her condition was critical when she was brought to the hospital and she was given a drip and life saving drugs. In spite of best treatment given to her, she could not be saved. From the bed-head ticket he could not tell as to who had brought the patient as it was not mentioned there. Dr. Bhupinder Singh, Medical Officer, Civil Hospital, Hoshiarpur (PW-6) on the application (Ex. PH) made by the Police on 10.12.1995 made his endorsement (Ex. PH/4) to the effect that Baldev Kaur was fit to make her statement. On the query made by the Tehsildar-cum-Executive Magistrate Sh. Amarjit Salwan (PW5), Dr. Bhupinder Singh (PW6) made an endorsement (Ex. PH/3) at 5:40 p.m. on 10.12.1995 and it was opined that she was fit to make her statement. The statement (Ex. PJ) of Baldev Kaur was recorded in the presence of Dr. Bhupinder Singh (PW6). Whatever she spoke was recorded. Nothing was added or omitted. It was read-over to Baldev Kaur and she thumb-marked it after admitting it as correct. According to Dr. Bhupinder Singh (PW-6)

throughout her statement she remained fit. He appended his note (Ex. PJ/3) in this respect. On 14.12.1995, Baljinder Kaur (appellant) was produced before Dr.Bhupinder Singh (PW-6) while she was in Police custody. The doctor (PW-6) was asked to report whether there was any injury or burn mark on her person and he made a report. He examined her on 14.12.1995 at 3:40 p.m. and made a report that there was no injury mark or burn mark on her person. He made his endorsement (Ex. PK/1) in this regard on the Police application (Ex. PK). In cross-examination it is stated that the Magistrate (PW5) had put some questions to the patient (Baldev Kaur) to know her capacity to make statement. The replies given by her were not recorded by the Magistrate (PW5). It is stated that it was incorrect to suggest that the patient was not in a fit condition to make a statement or that he had given a false certificate of fitness. Dr. Renu Kumari, Medical Officer, Civil Hospital, Hoshiarpur (PW-4) conducted the post-mortem examination on the dead body of Baldev Kaur. According to her there were superficial to deep burns present over the front and back side of right leg, front side of left thigh, front side of thorax and abdomen and perineal area was unburnt. Right arm was burnt at front and backside and dorsum of right hand front and back side of left arm with its palmer surface and back of thorax and abdomen, except illiac area were burnt. Front of neck, face and singing of forehead hair was present. The burns were smeared with ointment. At some places puss was present, line of demarcation and reparative process was present. Burns were more than 75 %. In the opinion of Dr. Renu Kumari (PW-4), the cause of death in this case was due to septicemia, which was caused by infection in burnt area. The same was sufficient to cause death in the ordinary course of nature. The burns were ante-mortem. The probable time that lapsed between injuries and death was 3 to 4 days and between

death and post-mortem was within 12 hours. The carbon copy of the post-mortem report is Ex. PE and the pictorial diagram showing the seat of burns is Ex. PE/1. Dr. Renu Kumari (PW-4) was cross-examined and she stated that the hair on the forehead were found singed. The long hair on the head were found intact. The burning of hair on the forehead could be result of flames. There was no burn on the nape and part immediately below it.

On the basis of the evidence and material on record it is quite evident that Baldev Kaur died due to burn injuries that she suffered. The contention of the learned counsel for the appellant that the dying declaration is not reliable inasmuch as the deceased was tutored and prompted to make the same by her mother and brother who were present in the hospital for the last three days may be considered. It may be noticed that Sh. Amarjit Salwan, Tehsildar-cum-Executive Magistrate, Hoshiarpur (PW-5) recorded the dying declaration (Ex.PJ) of Baldev Kaur. Application (Ex. PH) was addressed by Balkar Singh, ASI (PW-12) to the Doctor Sahib, Civil Hospital, Hoshiarpur stating that Baldev Kaur was admitted in an injured condition in the Civil Hospital, Hoshiarpur due to burn injuries and it be informed whether she was in a fit condition to give her statement. On the said application, Dr. Bhupinder Singh (PW-6) made an endorsement (Ex. PH/4) that the patient was fit to give a statement. Then the application (Ex. PH) for the purpose of recording the dying statement of Baldev Kaur was marked vide Ex.PH/2 by Sh. Harminder Singh, SDM, Hoshiarpur to Shri Amarjit Salwan, Tehsildar-cum-Executive Magistrate (PW-5) who recorded the statement of Baldev Kaur in the presence of Dr. Bhupinder Singh (PW-6). The latter had remained present throughout the recording of the statement and the patient also remained conscious throughout. It is deposed by Shri Amarjit Salwan (PW-5) that Baldev Kaur had stated that her

mother-in-law had poured kerosene oil on her and had set her on fire. At that time her husband had gone to the Gurudwara. He recorded the statement (Ex. PJ) without any addition or alteration. It was read over to Baldev Kaur and she put her thumb impression after admitting it as correct. The doctor (PW6) also made an endorsement (Ex. PJ/1) in his presence. During the recording of statement, no Police official was allowed to be present there. He sent the original statement vide endorsement Ex. PJ/2 to the CJM, Hoshiarpur. His statement was recorded by the Police. In cross-examination it is stated by Sh. Amarjit Salwan (PW5) that he did not tell the police or the SDM that the statement (dying declaration) should be recorded by the Judicial Magistrate since he had to obey the order of his officer. He did not know that dying declaration has to be recorded by a Judicial Magistrate in Punjab. He did not give any certificate regarding fitness of the patient to make a statement in his note nor any satisfaction to that effect was recorded. He did not put any question to the patient. He disclosed his identity to the patient and informed her that he had come to record her statement. He did not give any note to this effect in Ex. PJ.

Dr. Bhupinder Singh, Medical Officer, Civil Hospital, Hoshiarpur (PW-6) stated on 10.12.1995 an application Ex.PH was made before him by the police as to the fitness of Baldev Kaur and after examining her he made an endorsement (Ex.PH/4) at 4.45 p.m. that she was fit to make a statement. On a query of the Executive Magistrate (PW5), he made an endorsement (Ex.PH/3) and opined at 5.40 p.m. that Baldev Kaur was fit to make a statement. The statement (Ex. PJ) was recorded in his presence at the instance of Baldev Kaur (deceased). Whatever she spoke was recorded. Nothing was added or omitted. The statement was read-over to her and she thumb-marked it after admitting it to be correct. Throughout

her statement she had remained fit and he appended his note (Ex. PJ/3) in this respect. Therefore, it has been established that the dying declaration (Ex. PJ) was recorded by Sh. Amarjit Salwan (PW-5) in the manner as given by Baldev Kaur (deceased). Besides, it may be noticed that in the dying declaration (Ex.PJ), Baldev Kaur (deceased) did not name anyone else than the actual culprit. She did not name her husband or her father-in-law as the persons who had set her on fire. Rather she stated that her father-in-law was a nice person. The dying declaration (Ex.PJ) is, therefore, a true account of what had actually happened. Sh. Amarjit Salwan (PW-5) is Tehsildar-cum-Executive Magistrate and he was asked by the SDM, Hoshiarpur to record the statement of Baldev Kaur. Even if some formalities were not complied with, the same would not be of much significance as the dying declaration was recorded when its maker was in a fit condition and was not under the influence of anyone. This Court is satisfied that it represents a true account of the manner in which Baldev Kaur was set on fire.

The contention of the learned counsel for the appellant is that Harmohan Singh alias Paramjit Singh (DW-1) who was a witness to the occurrence and had received burn injuries, has not been examined. It is therefore, submitted that the defence version is plausible. Harmohan Singh alias Paramjit Singh (DW-1) who appeared on behalf of the appellant stated that after the birth of his elder daughter namely Munisha about 2 ½/3 years ago, the health of Baldev Kaur (deceased) deteriorated and she developed some trouble in her breasts. She was got treated by him and her parents. Smt. Biro who was the mediator to the marriage between him and Smt. Baldev Kaur had come to his village and asked for some money from his mother for getting Baldev Kaur treated. His mother showed her inability to give any money and there was a quarrel between his mother and Smt. Biro.

On the day of the present incident he (Harmohan Singh alias Paramjit Singh) (DW-1) was present in the adjoining room where Baldev Kaur was boiling milk for the child. He heard her shrieks and when he went to the room he noticed that Baldev Kaur had caught fire. He tried to extinguish the same and his arms got burnt while saving her. On his asking Baldev Kaur told him that when she was boiling milk on the stove it suddely flared up and she got burns on her body. She was brought to the Civil Hospital, Hoshiarpur. The mother and father of Harmohan Singh alias Paramjit Singh (PW1) had accompanied him to the hospital. She was admitted in the hospital and he had sent intimation to his in-laws about Baldev Kaur being accidentally burnt. He had shown his burnt arms to the doctor and he had applied some ointment. He had also shown his arms to the Police. He was cross-examined by the Public Prosecutor and he stated that Baldev Kaur was cremated at her parents' village and he did not attend the cremation. He did not know as to who else from his family had gone to attend her cremation. In fact none had gone to attend the cremation as they were threatened by them. He was working as a labourer on daily wages and he might be earning Rs.400 to 500 per month. He had paid a sum of Rs.1000/- at the time of birth of his elder daughter for the treatment of his wife. At that time he was in service. He had withdrawn the amount from the post office. He admits that there is a place known as Shahidi Wali Jagah (place) in his village and he has strong faith in that place. He usually goes there to pay obeisance. He denied as incorrect that his wife and mother used to quarrel with each other and that on account of quarrel his wife was burnt (set on fire) by his mother after putting kerosene oil on her. It is also stated that his mother often visited his house on many occasions. He denied the suggestion that he had deposed and made a false statement to save his

mother. He did not make any application either before senior police officials or the Panchayat that his wife had got burnt accidentally. The medical examination of Harmohan Singh alias Paramjit Singh (DW-1) the husband of Baldev Kaur (deceased) was conducted by Dr. M. L. Puri, Medical Officer, Civil Hospital, Hoshiarpur (PW-1) on 6.12.1995 at 12:30 PM. The patient (Harmohan Singh alias Paramjit Singh) was brought by the Police i.e. Head Constable Santok Singh. The following injuries were joined on his person:-

1. Irregular superficial burn marks extending from medial aspect of right lower half of arm to the middle of anterior of right forearm. 25cm X 2 to 6 cm inside with most of its healed margins, except for its central portion 7 to 3 cm in size, which showed late stages of healing. Surrounding skin showed dark discolouration and no sign of infection.
2. Singing of hair of beard present.
3. Singing of hair of lower half of left forearm.

No other mark of external injury detectable on his person. Nature of injuries was declared simple. Probable duration of injuries was about 7 days and it was due to burns.

The fact that Harmohan Singh alias Paramjit Singh (DW-1), the husband of Baldev Kaur (deceased) had tried to save his wife is not disputed by the prosecution. He indeed tried to save his wife who has also stated that her husband put off the fire by throwing a bucket of water. It is

for this reason that he was not charge-sheeted (challenged) by the Police. It is only Baljinder Kaur (appellant) who was charge-sheeted (challenged) by the police. Therefore, it is quite evident that the dying declaration (Ex.PJ) of Baldev Kaur (deceased) is cogent, convincing and reliable and the learned State counsel is correct in asserting that it is a simple dying declaration in which she has only named the person who actually sprinkled kerosene oil on her and set her on fire by lighting a match stick.

The contention of the learned counsel for the appellant that no kerosene oil was found at the place of the incident is not of much consequence. Balkar Singh, ASI (PW-12) had inspected the spot and prepared a rough site plan (Ex. PN) with correct marginal notes. From the inspection at the spot he lifted one bucket (Ex. P1), one plastic can (Ex. P2) and a match box (Ex. P3). Therefore an empty plastic can (Ex. P2) was found at the spot and was lifted from there. The dying declaration (Ex. PJ) of Baldev Kaur is that her mother-in-law threw kerosene oil on her and set her on fire. In the site plan (Ex.PN) prepared by Balkar Singh ASI (PW12) mark 'C' is shown as the place from where a plastic can of 5lts. Kerosene oil was lying. Therefore, there was a 5 lts. plastic can (Ex.P2) of kerosene oil. It may in fact be noticed that no stove was recovered from the place of occurrence which is the case set up by the appellant and is to the effect that Baldev Kaur got burnt accidentally while working on a stove. Therefore, the recovery of the plastic can (Ex. P2) goes to show that the stand of the learned counsel for the appellant that kerosene oil was not recovered stands belied. The plastic can (Ex.P2) that was recovered goes to show that it contained kerosene oil, which was sprinkled on Baldev Kaur. The contention that the burn injury were caused in an accidental fire is

unsustainable as no kerosene oil stove is shown to have been recovered from the place of occurrence.

The further contention of the learned counsel for the appellant that Baldev Kaur (deceased) and her husband Harmohan Singh alias Paramjit Singh (DW-1) were living separate from their parents and, therefore, for the mother-in-law of Baldev Kaur to go to their house and set Baldev Kaur on fire is not probable, is also devoid of any merit. It may be noticed that the site plan (Ex. PN) prepared by Balkar Singh, ASI (PW-12) depicts the residential room of Harmohan Singh. Mark 'A' in the site plan (Ex.PN) is the place in the kitchen where Baldev Kaur was set on fire by her mother-in-law. Mark B in the site plan (Ex.PN) is the place where an iron bucket was lying and Mark-C is the place where the plastic can (Ex. P2) of five litres kerosene oil was found. The distance from A to B was about 4 feet and from A to C about 6 feet. Therefore, the occurrence had taken place in the kitchen adjoining the residential room of Harmohan Singh alias Paramjit Singh-the husband of Baldev Kaur (deceased). Besides it has come in the evidence of Harmohan Singh alias Paramjit Singh (DW-1) that his mother-in-law often came to their house. It may also be noticed that the incident had occurred at about 6/7:00 a.m. in the morning and it is not an unusual time where the appellant Baljinder Kaur (mother-in-law of the deceased) would not go.

The contention that the mother and brother of the deceased were present for three days at hospital and they had prompted and tutored Baldev Kaur who made the dying declaration (Ex. PJ) is also without any merit. Smt. Prito (PW-7) who is the mother of Baldev Kaur (deceased) stated that she received a message that her daughter had been burnt and she was called at village Attowal. She went to Civil Hospital, Hoshiarpur but

her daughter was not in her senses. She did not regain consciousness even on the next day and on the third day after regaining consciousness she told Smt. Prito (PW-7) that three days earlier in the morning, she had quarrelled with her mother-in-law while her husband had gone to pay obeisance at Shahidan. She also told her that her mother-in-law had put kerosene oil on her and set her on fire. As such she was burnt on that account. Her husband had put off the fire. Baldev Kaur also informed that her husband had been quarreling with her earlier also. He had demanded money and had sent her to bring Rs.5000/- from her parents. In cross-examination it is stated by Smt. Prito (PW-7) that her daughter had separated from the accused (Baljinder Kaur) after about one and a half year of their marriage. It is also stated that, at her instance Smt. Biro who was the mediator to the marriage between Baldev Kaur and Harmohan Singh alias Paramjit Singh, had gone to village Attowal to meet the in-laws of Baldev Kaur and to talk about the attitude of her son-in-law. She was questioned as to whether she showed the burns received by her son-in-law to the Police. She replied that since she was not in her senses, therefore, could not say if she had shown the burns to the police. The learned Sessions Judge recorded that the witness (Smt. Prito PW7) had given the answer after much deliberations and with a wavering mind. She denied the suggestion that Baldev Kaur had caught fire accidentally while working on a stove in the kitchen. Jinder Ram (PW-8) brother of the Baldev Kaur (deceased) also appeared in the witness box. He deposed on the same lines as his mother Smt. Prito (PW-7). He stated that his sister Baldev Kaur (deceased) remained unconscious for two days and on the third day when she regained consciousness, she told them that she had quarrelled with her mother-in-law a day before yesterday and she had put kerosene oil on her and set her on

fire. Baldev Kaur (deceased) had not stated anything about her husband. Jinder Ram (PW-8) was cross-examined on behalf of the appellant. He denied the suggestion that Baldev Kaur (deceased) was unconscious on 10.12.1995 or that she did not make any statement before him about the burns received by her. It may be noted that in the cross-examination of Smt. Prito (PW-7) and Jinder Ram (PW-8) who are the mother and brother respectively of the deceased, no suggestion was put to them that they had prompted or tutored Baldev Kaur (deceased) to make a statement so as to implicate her mother-in-law. A party is to put so much of its case to an opponent's witness under cross-examination as it concerns that particular witness and failure to cross on a particular aspect as it concerns the said witness, the Court's presume that aspect to be not the case of the party, which has raised it. If it is intended to suggest that a witness was not speaking the truth on a particular aspect, his attention is drawn to the said fact by cross-examination so that the witness under examination may have an opportunity of giving his explanation. Therefore, the failure of the appellant to cross-examine Smt. Prito (PW-7) and Jinder Ram (PW-8) as regards the tutoring and prompting of Baldev Kaur (deceased) to make a statement would show that there was no tutoring and prompting on their part and in fact no such case was set up by them. Rather that the deposition of the said witnesses Smt. Prito (PW-7) and Jinder Ram (PW-8) is to the effect that Baldev Kaur had remained unconscious for the first two days and she regained her consciousness on the third day. In fact, Balkar Singh, ASI (PW-12) in the Police proceedings (Ex. PJ/5) records that on 8/12/1995 on receipt of a chit in respect of Baldev Kaur (deceased) being admitted in hospital he directed Head Constable Nirmal Singh to record the statement of the patient. Nirmal Singh submitted an application to the doctor for

recording the statement of Baldev Kaur and the doctor on 8.12.1995 and 9.12.1995 opined that the injured was unfit to make a statement. Dr. Jaspreet Singh Dhami (PW-3) has also stated that he had declared vide endorsement (Ex. PD/1) on the application of the Police on 8.12.1995 that the patient (Baldev Kaur) was unfit to make a statement. Therefore, it is established that Baldev Kaur (deceased) was not fit to make a statement on 8.12.1995 and 9.12.1995 and she made a statement (Ex. PJ) on 10.12.1995 before the Executive Magistrate (PW5). Therefore, it cannot be said that she was tutored or prompted by any one or that some outside influence was exerted on her to make such a statement. Therefore the contention of the learned counsel for the appellant that Baldev Kaur deceased was tutored and prompted to make the dying declaration is without any merit.

In the circumstances the contention that the defence version is plausible is without any merit. The stand of the appellant that Baldev Kaur (deceased) had accidentally caught fire while working on a stove in the kitchen is not established. The dying declaration which has been duly proved on record and inspires the confidence of the Court regarding its truthfulness and that it is not a result of either tutoring or prompting, the same is to be accepted. Besides, Dr. Bhupinder Singh (PW-6) has stated that he recorded an endorsement on the dying declaration itself that the patient was throughout fit to make the statement. In the facts and circumstances, the dying declaration having been recorded by an Executive Magistrate (PW5) does not in any manner create any doubt as regards its authenticity and genuineness. It is not the requirement of law that the dying declaration must necessarily be recorded by a Judicial Magistrate only though it is a matter of prudence. There is no hard and fast rule in this regard. The dying

declaration (Ex.PJ), which is proved and established on the record is prudent, cogent and convincing.

Therefore, in the facts and circumstances there is no merit in the appeal and there is nothing to dislodge the findings recorded by the learned Trial Court in convicting and sentencing the appellant.

Consequently, the appeal is dismissed.

(S. S. Saron)
Judge

(Rakesh Kumar Jain)
Judge

12.12.2008
A.D/amit